

**REMARKS**

Claims 7-17, 38-49, 61-89, and 91-94 were pending in the application. Claims 66-69, 74-76, 78-82, 87-89, 91, and 93-94 have been amended. New claims 95-163 have been added. Thus, claims 7-17, 38-49, 61-89, and 91-163 are pending following entry of the amendment.

Claims 66 and 67 have been amended for formalities. Claims 68 and 69 have been amended to change the dependency. Claims 74-76, 78-82, 87-89, 91, and 93-94 have been amended to delete reference to multiple dependent claims. Accordingly, new claims 95-163 have been added to include the subject matter of amended claims 74-76, 78-82, 87-89, 91, and 93-94. Support for the amendments to claims 78 and 82 can be found in the claims as originally filed and at page 10, line 6 of the specification. No new matter has been added.

Amendments to the claims should in no way be construed as an acquiescence to any of the Examiner's rejections and was done solely to expedite the prosecution of the application. Applicant reserves the right to pursue the claims as originally filed in this or a separate application(s).

**Acknowledgement of Withdrawn Rejections**

Applicant gratefully acknowledges the Examiner's withdrawal of the previous rejections.

**Allowed Claims**

Applicant gratefully acknowledges the Examiner's indication that claims 7-17, 38-49, 61-77, 79-81, and 93 are free of the prior art. Applicant also gratefully acknowledges the Examiner's indication that claims 7-17, 38-49, 61-77, 79-81, and 93 are allowed.

Rejection of Claims 78, 82-92 and 94 Under 35 U.S.C. § 112, First Paragraph

The Examiner has rejected claims 78, 82-92 and 94 under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement. The Examiner alleges that there is not adequate written description in the specification for use of the term “interferon inducing agents.” The Examiner also states that “there does not appear to be an adequate description in the specification as-filed of the essential structural feature that provides the recited function of inducing an interferon.” Applicant respectfully traverses this rejection.

As described by the Examiner, in order to satisfy the written description requirement for a claim drawn to a genus, the claimed genus may be described through a representative number of species by disclosure of relevant identifying characteristics of the genus. Applicant submits that the specification satisfies the written description requirement by providing a representative number of species for the genus of “interferon inducing agents.” The specification teaches that members of the genus of interferon inducing agents all have the common characteristic of being capable of stimulating endogenous interferon production, and also provides representative species of the claimed genus which share this common functional characteristic or property. Applicant teaches that a variety of agents can induce endogenous interferon production, including double stranded RNA, agents derived from plants, and pharmaceutical agents, such as imiquimod, saparal, aryl pyrimidones, and Ridostin (see page 9, lines 27-30; page 32, line 33 to page 33, line 26; and page 47, line 24 to page 48, line 26 of the specification).

Furthermore, based on teachings in the specification and the knowledge in the art at the time of filing, one of ordinary skill in the art would be able to predict other species of interferon inducing agents other than those disclosed. As described in the M.P.E.P. section 2163 II.A.3.a.ii., a sufficient “representative number” of species of the claimed genus is “an inverse function of the skill and knowledge in the art.” Based on the teachings of the specification, one of ordinary skill in the art could predict additional interferon inducing agents by determining

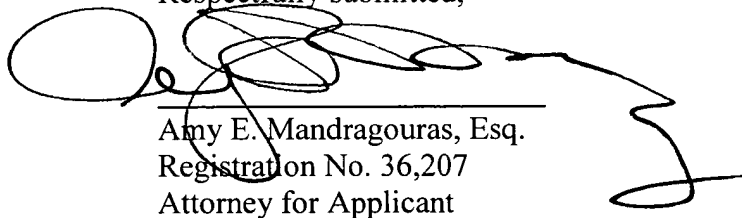
whether such an agent increased endogenous production of an interferon, such as increased production of IFN- $\gamma$ , IFN- $\alpha$ , or TNF, using common methods known in the art.

Thus, Applicant submits that the written description requirement under U.S.C. 112, first paragraph is satisfied for the genus "interferon inducing agent," as the instant specification describes a representative number of species with a common, identifying characteristic, *i.e.*, capability of inducing endogenous interferon production. Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 112, first paragraph rejection of claims 78, 82-92 and 94.

### **CONCLUSION**

Reconsideration and allowance of all the pending claims is respectfully requested. If a telephone conversation with Applicant's Attorney would expedite prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 227-7400.

Respectfully submitted,



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